IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8594 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISMAIL ALLARAKHA

Versus

DY EXECUITVE ENGINEER

Appearance:

1. Special Civil Application No. 8594 of 1993

MR MA KHARADI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 12/03/2003

ORAL JUDGEMENT

The present petition is filed by the petitioner seeking direction to the respondents to regularize petitioner's services and thereby considering the

seniority with other employees and all other benefits which the petitioner was entitled to get. The petitioner has also prayed for quashing and setting aside the order passed by the Labour Court Junagadh in Reference (LCR No.588/1990) dated 5-5-1993, whereby the Labour Court has refused to grant backwages to the petitioner.

2) It is the case of the petitioner that the petitioner was appointed as daily wager in the year 1983 and was paid the daily wage of Rs.20 per day. The petitioner has completed 240 days as daily wager in his service. Despite this fact, the petitioner was removed from the job. Subsequently, on 28-3-1985 the petitioner was reinstated on his job and for the backwages of the said period, the petitioner has made a Reference vide Reference (LCR No.1389/1985) before the Labour Court, Rajkot, which was decided on 16-6-1990.

3) It is the say of the petitioner that since the petitioner has challenged the illegal action of the respondent, the petitioner was transferred from Junagadh to Manavadar by way of punishment. As soon as the petitioner reported to his duty, he was informed by the Deputy Civil Engineer, Road and Building, Sub-division, Manavadar vide letter dated 22-11-1985 that though he has been transferred to this Sub-division, there was no vacancy for the post of Driver in the Manavadar Sub-division and hence he could not be allowed to resume his duties in Manavadar Sub-division.

4) It is further stated that though the petitioner was informed that there was no vacancy at Manavadar Sub-division, the respondent has not made any other arrangement for the petitioner. The petitioner, therefore, again approached to the Manavadar Sub-division on 16-5-1986, where again he was informed that no vacancy was available with the Manavadar Sub-division and he could not be permitted to resume his duties in Manavadar Sub-division. This fact was also conveyed to the respondent by the Manavadar Sub-division by letter dated 16-5-1986.

5) During the pendency of the reference before the Labour Court, the petitioner had shown his willingness to work at Manavadar and hence, he was reinstated in service in 1991 and he has resumed his duty at Manavadar. The Labour Court has thereafter, decided the reference on 5-5-1993 holding that since the petitioner was already reinstated, there was no need to pass order regarding reinstatement. With regard to backwages Labour Court has observed that the petitioner was not discharged from

service. On the contrary, the petitioner was transferred to Manavadar and he has not resumed his duty and hence there was no question of awarding any backwages to the petitioner. It is this order of the Labour Court, which is under challenge in the present petition.

6) Heard Mr.M.A.Kharadi, learned advocate for the petitioner. Though the rule was duly served on the respondent nobody appeared on behalf of the respondent till this date. Mr.Kharadi has strongly submitted that the petitioner has reported to his duty at Manavadar. However, there was no vacancy at Manavadar and hence the petitioner was not allowed to work at Manavadar. In support of his submission, he produced two letters dated 22-11-1985 and 17-5-1986. He has fairly submitted that this two letters were not produced before the Labour Court. He, however, submitted that it is the duty of the respondent to produce these letters before the Labour Court as they were in their possession. The Labour Court has decided the issue regarding backwages on the ground that there was no evidence produced by the petitioner with regard to his reporting to duty at Manavadar. The Labour Court had in terms held that even in the notice issued by the petitioner to the respondent dated 6-1-1985, it was not mentioned by the petitioner that he has gone to Manavadar to report to his duty but he was not allowed to resume his duty there. On the contrary, the respondent has given a reply to the notice on 16-12-1985 stating that the petitioner was transferred to Manavadar and the petitioner has not gone to Manavadar and hence it cannot be said that the petitioner's services were terminated. The Labour Court has further observed that the petitioner's services were not terminated and that the petitioner was transferred to Manavadar and since he has not resumed his duties, no backwages could be awarded to the petitioner. The Labour Court has come to the conclusion, on the basis of evidence produced before it and hence it cannot be said that the Labour Court has not correctly appreciated the documents produced before it. In the given set of circumstances, no different view could have been taken by the Labour Court and hence I do not find any infirmity in the order passed by the Labour Court and finding arrived at and conclusion drawn by the Labour Court cannot be said to be perverse or unreasonable and hence this Court cannot interfere in the order of the Labour Court, while exercising extraordinary writ jurisdiction under Article 226/227 of the Constitution of India.

7) However, fact remains taht the letters dated 22-11-1985 and 17-5-1986 are produced by the petitioner

for consideration along with the petition and the respondent has not appeared before this Court, despite the fact that the rule issued by this Court on 26-8-1993 was duly served on the respondent. Keeping this fact in mind, the petitioner is hereby directed to make representation before the authorities on the basis of averments made by him in the petition, as well as on the basis of these two letters, showing that he has already resumed his duty at Manvadar, but he was not allowed to work there and hence, the petitioner's case for granting backwages should be considered by the respondent authorities. If such a representation is made by the petitioner to the respondent authorities within one month from today, the same shall be considered by the respondent authorities within three months from the date of receipt of such representation and same should be decided in accordance with law, as well as, on the basis of the facts and evidence on record.

8) With the above observations, the petition is disposed of. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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